



U.S. Citizenship  
and Immigration  
Services

(b)(6)

DATE: JUN 11 2013 OFFICE: TEXAS SERVICE CENTER

IN RE: Petitioner:  
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Texas Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will sustain the appeal and approve the petition.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner, a chemical engineer, seeks employment as a research associate at the University of [REDACTED]. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits a brief from counsel and evidence of independent citation of the petitioner's published work.

Section 203(b) of the Act states, in pertinent part:

(2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. –

(A) In General. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of Job Offer –

(i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by

increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . .” S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to the regulations implementing the Immigration Act of 1990, published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

The Service [now U.S. Citizenship and Immigration Services (USCIS)] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the “prospective national benefit” [required of aliens seeking to qualify as “exceptional.”] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

*In re New York State Dept. of Transportation*, 22 I&N Dec. 215 (Comm’r 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, the petitioner must show that the alien seeks employment in an area of substantial intrinsic merit. Next, the petitioner must show that the proposed benefit will be national in scope. Finally, the petitioner must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

While the national interest waiver hinges on prospective national benefit, the petitioner must establish that the alien’s past record justifies projections of future benefit to the national interest. The petitioner’s subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term “prospective” is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

The regulation at 8 C.F.R. § 204.5(k)(2) defines “exceptional ability” as “a degree of expertise significantly above that ordinarily encountered” in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that alien cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his or her field of expertise.

The petitioner filed the Form I-140 petition on January 18, 2012. In an accompanying introductory statement, counsel stated:

[The petitioner] is a renowned polymer scientist who has largely influenced his field and directly aided in the development of sophisticated polymer materials. [The petitioner’s] research work is globally important due to its potential to be used in the fabrication of electronic and medical applications. . . .



[The petitioner is r]ecognized as a leading researcher among his peers. . . .

[The petitioner's] career is marked by a multitude of pioneering contributions to the polymer science field, specifically for electronic and medical applications. . . . His numerous research projects have resulted in major breakthroughs in the polymer science field and have already led to significant advancements in the fabrication of new materials.

Details about the petitioner's work appeared in five witness letters that accompanied the petition.

The area in which [the petitioner] is extensively involved is block copolymers. His research projects have produced results that direct our field in new directions. For instance, his work on block copolymers yielded the discovery of a block copolymer morphology that had not been observed by anyone else in the field. This new morphology is of a complex crystal structure known as Frank-Kasper  $\sigma$ -phase. The Frank-Kasper  $\sigma$ -phase had only been seen in certain metal alloys and organic molecules, but not in block copolymers.

described, in technical detail, another project in which the petitioner "synthesized a block copolymer surfactant and prepared block copolymer solutions in oil and water to investigate the path-dependency of resulted micellar geometries." stated:

By finding the dependence of micellar geometry on sample preparation methods, he has widened the controllability of micellar solutions for various applications, e.g., targeted delivery of anti-cancer agents, paints, and cleaning agents.

The research project described above has attracted wide attention in the field and positioned [the petitioner] as a unique scientist in the field of polymer science because his finding is a rare experimental example that describes how block copolymer surfactant[s] behave in oil and water.

, associate professor at , provided additional details about the petitioner's work:

Surfactants are compounds that consist of water-philic and oil-philic parts. These structural characteristics lower the surface tension between oil and water. Surfactants are used in various applications, for example, in soaps, pharmaceuticals, and food additives. Also, as an accompanying phenomenon from the low interfacial tension, surfactants self-assemble in water and form micelles (aggregates of surfactant molecules in a liquid). . . .

Block copolymer surfactants have many applications, but [the petitioner] was interested in applying them in treatments of prostate cancer. Therefore, he designed a complex project to investigate this possibility. . . . According to his experiment observations, the polymer vesicles encapsulating a model protein therapeutic, tumor necrosis factor- $\alpha$  (TNF $\alpha$ ), were precisely delivered to human prostate cancer cells in vitro. . . .

The unprecedented work executed by [the petitioner] is a major step forward in the right direction that will result in fully functional drug delivery systems based on polymersomes. . . .

This research project, among several other equally important contributions, has elevated [the petitioner] to the very top level of the materials science field.

The remaining three witnesses stated that they had not worked with the petitioner, but were familiar with his work. [redacted] of the [redacted] a senior scientist at [redacted] stated that the petitioner's "most recognized achievement is his discovery of a new morphology in sphere-forming block copolymers," specifically the Frank-Kasper  $\sigma$ -phase mentioned in [redacted] letter. [redacted] stated that this "formidable discovery has expanded our understanding on the principles of organization of matters [*sic*]. [The petitioner] has since published his astonishing discovery in the world-renowned *Science* journal and it was also highlighted in the same issue of the journal because of its importance in the scientific community."

[redacted] of the University [redacted] called the petitioner's discovery of Frank-Kasper  $\sigma$ -phase in block copolymers "[o]ne of the most striking discoveries in recent years." [redacted] stated: "I know that manufacturing companies and engineers regard the complex crystal structure discovered by [the petitioner] as a new opportunity for fabrication of devices at the nano-scale."

[redacted] of the University [redacted] stated:

[The petitioner's] discovery of Frank-Kasper  $\sigma$ -phase in block copolymers was very impressive for me because I had discovered the same phase in dendrimers which had been the single example of the  $\sigma$ -phase in organic compounds. Thus, I am one of the top qualified experts in the field who can emphasize the importance of his work. . . .

Discovering this new morphology in sphere-forming block copolymers essentially paves the way for new materials to be developed based on this special structure. . . .

[The petitioner's] research project has provided researchers with a revolutionary crystal morphology to prepare new materials. He has gained international recognition



for his work on this project and his future work will certainly continue to have a large impact on the entire manufacturing and electronics industries.

Counsel stated that the petitioner “has published a number of highly-regarded articles, which have proven their value to the scientific community by virtue of other top researchers having cited them over thirty six (36) times.” Counsel noted that, in an unpublished appellate decision issued in 2002, the AAO “approve[d] an NIW petition for a researcher with merely 16 citations.” Counsel furnished no evidence to establish that the facts of the instant petition are analogous to those in the unpublished decision. While 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding. The unpublished 2002 decision did not state or imply that every researcher with 16 citations is entitled to the national interest waiver; each petition involves unique factors that warrant individual consideration.

The petitioner’s *curriculum vitae* indicated that his [REDACTED] article was “highlighted with a perspectives article and featured in the [REDACTED]” but the initial submission included no evidence to substantiate these assertions.

On June 30, 2012, the director issued a request for evidence, stating that the submitted evidence showed that the petitioner’s published research “was modestly cited,” but “does not show how the beneficiary’s research has influenced the field.”

In response, the petitioner submitted evidence to corroborate prior assertions about the importance of his [REDACTED] article. A piece from the “Perspectives” section of that journal highlighted the article in the context of “[u]nderstanding how spherical supermolecular aggregates organize into crystals.” An [REDACTED] printout from the [REDACTED] web site stated that the discovery of the Frank-Kasper  $\sigma$ -phase in block copolymers illustrated “a fundamental property of nature” and demonstrated a molecular “shape that no one had ever seen in a plastic before.” The article did not mention the petitioner by name (instead referring to [REDACTED] . . . and his students”), but the petitioner was the first author of the [REDACTED] article that led to the [REDACTED] coverage. This national coverage corroborates witnesses’ claims about the significance of that work.

The petitioner also documented that the number of citations of his published articles had grown to 58, which corroborates witnesses’ claims about growing interest in his work.

The petitioner submitted three further witness letters. [REDACTED] innovation director at [REDACTED] discussed a practical application of the petitioner’s work:

The problem of litter created by some consumers’ improper disposal of [chewing gum] products . . . is one of the primary sustainability challenges faced by the chewing gum industry. . . . As the global leader in chewing gum manufacturing, [REDACTED] priority is to develop a gum base that is easier to remove and/or degradable if improperly disposed – while at the same time continuing to meet

consumers' sensory needs and preferences. A critical part of this work is [redacted] research partnership with the [redacted] in which [the petitioner] is a key player.

From the initiation of this project, [the petitioner] has been playing an indispensable role in developing new materials that provide the unique properties needed for an environmentally-friendly chewing gum base. He took an initiative in designing and synthesizing the block copolymer materials with his expertise and knowledge on block copolymers and chemical synthesis. The materials he designed have shown tremendous promise and from the early stages it was clear that these were potentially ideal candidates for chewing gum bases. In this regard we immediately recognized the great value of this work and filed a patent on the invention . . . which we expect to change the multi-billion dollar market of chewing gum in the world. . . .

[The petitioner's] breakthrough block copolymers will dramatically enhance our ability to produce new products for consumers. Since [the petitioner] has already created novel materials for chewing gums, I am positive he will now proceed to the fabrication of other block copolymers for other products.

A photocopied cover page shows that [redacted] filed an international patent application with the World Intellectual Property Organization on [redacted]

Professor [redacted] of the [redacted], stated:

I have not had the pleasure of meeting or collaborating with [the petitioner], but I have read his groundbreaking research findings. . . .

His discovery of the  $\sigma$ -phase in block copolymers was astonishing to the field of Materials Science and Engineering because, until recently, the  $\sigma$ -phase had been believed to occur only in certain metals or alloys. . . .

In view of [the petitioner's] exceptional discovery of the Frank-Kasper  $\sigma$ -Phase in organic block copolymers, it is only logical to consider him an extraordinary scientist in the field of polymer science. . . . [The petitioner's] findings will help engineers design and manufacture sophisticated materials with specific properties.

Professor [redacted] of [redacted] Japan, stated: "The Frank-Kasper  $\sigma$ -phase in block copolymers . . . is one of the most important discoveries that evidences non-metallic quasicrystals and related phases, and a valuable example attesting to the universality of quasicrystalline order in the universe." [redacted] stated that the petitioner's "groundbreaking findings are firm evidence of his special chemical analytical skills and unique knowledge."

The director denied the petition on September 19, 2012, stating that the petitioner had not submitted sufficient evidence of his impact and influence on his field. On appeal, counsel asserts that the submitted witness letters, along with the growing number of documented citations, establishes the petitioner's impact and influence on his field. The petitioner documents 68 citations of his published work at the time of the appeal.

Counsel correctly observes that the witnesses did not simply offer general praise for the petitioner or declare, without further explanation, that his work is especially important, or that it has attracted attention from unnamed others in the field. Rather, they provided specific details about what the petitioner has done and why it is noteworthy. Such letters cannot, by themselves, justify approval of the petition, but the petitioner did not rely on the letters by themselves. Rather, he submitted credible, first-hand documentary evidence that provided crucial support for key claims. The petitioner demonstrated, for instance, that the work of his research team received national coverage on [REDACTED]. The record shows that a pattern of citation was already in place when the petitioner filed his petition, and that pattern has continued and accelerated with more documented citations at every stage of the petition/appeal process.

The evidence in the record establishes that the scientific community recognizes the significance of this petitioner's research rather than simply the general area of research. The benefit of retaining this alien's services outweighs the national interest that is inherent in the labor certification process. Therefore, on the basis of the evidence submitted, the petitioner has established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has sustained that burden. Accordingly, the AAO will withdraw the director's decision and approve the petition.

**ORDER:** The appeal is sustained and the petition is approved.